

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WI-LAN INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-cv-521-LED
v.	§	
	§	JURY TRIAL DEMANDED
ALCATEL-LUCENT USA INC.; <i>et al.</i>	§	
	§	
Defendants.	§	
	§	

**PLAINTIFF WI-LAN INC.’S SUR-REPLY IN OPPOSITION TO THE ERICSSON
AND SONY MOBILE DEFENDANTS’ MOTION FOR LEAVE
TO SUPPLEMENT SUMMARY JUDGMENT BRIEFING**

Defendants’ Reply (Dkt. No. 286) fails to demonstrate good cause for their failure to meet the Court’s Deadlines by at least two months. Accordingly, for the reasons set forth in Wi-LAN’s oppositions (Dkt. Nos. 283, 285), their Motion for leave to file a new summary judgment motion should be denied.

ARGUMENT

A. The Court’s Standing Order Applies In This Case.

Rather than offer a reasonable explanation for their failure to seek an extension of time to comply with the Court’s deadlines regarding summary judgment letter briefs, Defendants now incredibly contend that the Court’s Standing Order does not apply in this case. But this argument is flatly inconsistent with the actions of the parties. (Reply at 2-3.) On November 4, 2011, Ericsson and Sony Mobile filed letter briefs seeking the Court’s permission to file summary judgment motions “[i]n accordance with the Court’s Standing Order.” (Dkt. Nos. 132 at 1, 133 at 1.) Wi-LAN similarly filed letter briefs. (Dkt. Nos. 140, 141.) Thus, the parties clearly recognized that the Standing Order was in effect. The Court’s resulting Order granting

permission to file summary judgment motions resolved any ambiguity as to whether the Standing Order was applicable to this case: “The Court has a standing order requiring leave of the Court before any motion for summary judgment may be filed.” (Dkt. No. 143.)

In addition, Defendants offer no plausible reason why the *deadlines* contained in that Order would somehow not be applicable, despite their recognition that the Order’s other requirements (such as letter briefing) applied. At the time Defendants filed their letter briefs, the dispositive motions deadline was November 16, 2012, nearly a year in the future. The Court later extended that deadline to December 7, 2012 (and hence extended the letter briefing deadline by three weeks as well). (Dkt No. 214, 216.) At no point did the dispositive motions deadline contained in the Docket Control Order change in a manner that would have placed the date for letter briefing in the past or otherwise created an impossible deadline. Rather, Defendants simply failed to observe that deadline or seek an extension of time to comply from the Court, despite being aware that the Standing Order applied.

B. Defendants’ Proposed Filing Is a New Motion For Summary Judgment.

Defendants claim that their proposed filing merely supplements their existing summary judgment briefing. It does not. Notably, Defendants fail to address how a proposed filing that expressly contends that an “additional issue must be decided” is a mere supplement to an existing motion. (*See* Dkt. No. 275, Ex. 1 at 3; *see also* Dkt. 283 at 4-5.) Moreover, the proposed filing relates to a distinct contractual provision, relies upon an entirely different legal theory, is based on separate and distinct allegations of fact, and seeks dramatically different relief. (*See* Dkt. 283 at 4-5.) Such a motion is no mere “supplement,” but rather a new summary judgment motion filed long after the Court’s deadline to seek leave.

CONCLUSION

Defendants seek to file a new motion for summary judgment two months after the deadline to seek leave of Court to file such motions, yet offer no reasonable explanation for their failure to comply with the Court's Orders or the prejudice to Wi-LAN that would result. Accordingly, for the reasons set forth above, as well as the reasons contained in Wi-LAN's oppositions, Wi-LAN respectfully requests that the Court deny Defendants' Motion for Leave.

Dated: January 14, 2013

Respectfully submitted,

By: /s/ Ajeet P. Pai

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A), on this the 14th day of January, 2013.

/s/ Ajeet P. Pai

Ajeet P. Pai